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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 2716 OF 2003

IN

SUIT NO. 4751 OF 1997

Jay Container Services Co.P.Ltd Plffs.
VS.
S D S Shipping P.Ltd and Ors. Defnds.

NOTICE OF MOTION NO. 3752 OF 2003

IN

SUIT NO. 4751 OF 1997

Jay Container Services Co.P.Ltd Plffs.
VS.
D S Shipping P.Ltd and Ors. Defnds.

V.K. Rambhadran with Ms. Vinita Davar
for the plaintiffs.
R.A. Fernandes for defendant no.1 and 3.

CORAM: S.U. KAMDAR, J.

DATE : 31st January, 2006.

P.C. : .

1. The present Notice of Motion is taken out under
Order 39 Rule 11 as amended by the amendment dated

1.10.1982. Under the said amendment it has been provided that if any party defies the order passed by this court then in that event his defence is liable to be struck off. In the present case by an order passed by the Supreme Court in Civil Appeal NO. 4064 of 2003 dated 8.5.2003 admittedly the defendant no.1 is directed to deposit Rs.50 lacs instead of Rs.80 lacs as directed by the High Court. It is not in dispute before me by the learned counsel for defendant no.1 that he has not complied with the said order. He also does not wish to avail an opportunity to comply with the said order though I offered the same. In the aforesaid circumstances I am left with no other alternative but to grant prayer (a) of the Notice of Motion. Notice of Motion is made absolute in terms of prayer clause (a).

2. In so far as Notice of Motion No. 3752 of 2003 is concerned the present Notice of Motion is taken out to dismiss the suit as against defendant no.3 till the disposal of the motion, stay is sought of the hearing of the Motion no. 2716 of 2003. The

only ground insupport of the motion for dismissal of the suit is that there is no prayer as against defendant no.3. I find no merits in the said contention because even if there is no prayer sought against the particular defendant still he can be impleaded as a party if the plaintiff finds that he is a necessary and/or proper party. In that light of the matter the suit cannot be dismissed by way of inter-locutory order. However it is made clear that defendant no.3 will be at liberty to contest that the suit is liable to be dismissed as against him for want of cause of action at the final hearing of the suit. Motion dismissed. No order as to costs.

sd/-
